THE LEGAL ASPECTS OF STRIKES

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AND

THE COURSE, EFFICACY AND JUSTIFICATION OF LEGISLATION TO PREVENT THEM

BY

PROBODHCHANDRA GHOSH, M.A., B.L.

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LEGAL ASPECTS OF STRIKES

CHAPTER I

Origin of Strikes

Concerted movements of labour analogous to strikes are found in ancient times and in the mediæval period and are as old as history itself. The annals of history are full of the innumerable rebellions of subject races, the slave insurrections, and the semi-servile peasant revolts. These forms of labour war, however, fall outside the scope of our subject because strikes in the modern acceptation of the term may be said to begin with the rise of capitalism and the differentiation between capital and labour in the 18th century.

In the latter part of the 18th century the slow-going methods of the handicraft stage were radically changed by the Industrial Revolution. It is true that even in the Middle Ages there was a labour question, but then everything was on so much small a scale then that the difficulties of the situation were far more manageable and the personal intercourse of masters and men was infinitely closer than that of the great modern employers and their

hands. Previous to the Industrial Revolution the organisation of industry was so simple that large number of the working classes were either independent producers working on their own account or might reasonably hope to become such by the exercise of thrift and industry for a few years. A workman generally assisted by his family made the goods in his own house and sold them either to travelling merchants or sometimes to manufacturers. But with the introduction of power manufacture (machinery and steam power) large factories began to be established and industries began to be concentrated necessitating greater accumulation of capital than what the ordinary journeyman could ever hope to have at his command. The use of expensive machinery and steam power made it impossible for men to carry on their work in their own homes. Instead of working by themselves or with a few assistants, men had to congregate in cities and submit to a new discipline in large groups organized for purposes of production. This brought with it a new division of society into classes. The machine and the workshop, as well as the raw material and the product ceased to be owned by the men who did the manual work and the masses became mere wage-earners from this time forward. Henceforward it became almost impossible for a workman to be an independent employer and the workman came to feel that he was a workman for life. Thus came into existence two industrial classes, *labourers* and *capitalists* with a great gulf between them which comparatively few men can cross, and with interests which often seem irreconcilable.

Combined with this economic tendency was also *the growth of democracy*. The labourers became increasingly dissatisfied with a condition of dependance. They wished not only for higher wages but for emancipation from

semi-patriarchal conditions. They demanded that wages shall not be settled once for all on the employer's offer but by a contract in which their own action shall play an effective part.

It was thus that employees began to combine for mutual protection against their employers. Thus old personal ties between the employer and the employee disappeared and bargaining became impersonal and cold-blooded. The labourers very soon discovered the disadvantage of bargaining individually under the system of *Laissez faire* with such employers and took to collective bargaining and to strikes as a weapon of last resort. Thus we see that strikes in the modern acceptation of the term began with the rise of capitalism and differentiation between capital and labour in the 18th century and is essentially a feature of modern industrial organisation.

References :—

Webb, History of Trade Unionism; Webb, Industrial Democracy; Ashley, Economic History, Vol. I; Cunningham, Growth of English Industry and Commerce, Modern Times, Part II; Hobson, Evolution of Modern Capitalism.

CHAPTER II

Definition of Strikes and the Scope of the Essay

Lord Chief Baron Kelly says in King and others *v.* Parker [1] : "There is no authority which gives a legal definition of the word 'strikes,' but I conceive the word means, a refusal by the whole body of workmen to work for their employers in consequence of either a refusal by the employers of the workmen's demand for an increase of wages or of a refusal by the workmen to accept a diminution of wages when proposed by their employers." In the same case Baron Pollock agreeing with Lord Kelly as to the meaning of the word 'strike' observed as follows in course of his judgment : "I think it is a combination whereby the body of workmen refused to carry on work unless their demands are met by their employers, by which I do not necessarily mean money demands." In Farrer *v.* Close [2] it was observed that a strike is a simultaneous cessation of work on the part of the workmen. The essential characteristics of strikes lie in the common agreement among the workers, sudden cessation of work, and coercion exercised thereby upon the employers. It may be due to various causes relating to employment and not merely to wages. The meaning of the word as given in the Oxford Dictionary is—a concerted refusal to work by employees till some grievance is remedied. So the word 'strike' may be best defined as a sudden cessation of work resulting from an agreement on the part of a body of workmen either to break or not

[1] 34 L.T. 887 at p. 889 (1876).

[2] L. R. 4 Q.B. 602 at p. 612 (1869).

to renew their existing contract of service for the purpose of obtaining or resisting a change in the conditions of employment. So the strike is not a mere refusal to work, for such an act has never been made punishable by law, nor is it the abandonment of work begun, for the right to repudiate exists in the case of labour contracts just as in that of any other contract that is not for a fixed term. The strike is a means of constraint exercised by one contracting party over the other in order to obtain certain modification of the contract. In the case of strike the coercion consists in the sudden interruption of labour and injury which results for the employer. It should be noted, also, that though a strike may be accompanied by breaches of contract and intimidation and riot, yet such features as these, though common to many strikes, are excluded from the legal definition of the word strike.

There is no doubt that strike is an evil and even the most peaceful strike which is very rare results in loss to one party or other which again is loss to the society. A strike is an industrial war attended with most of the horrors of warfare. It is, therefore, necessary that some methods should be found out, if possible, to secure industrial peace by preventing strikes. It is not, however, within the scope of this thesis to discuss the merits and demerits of such schemes as Co-operation, Profit Sharing, Sliding Scale, Industrial democracy and other analogous schemes as methods of securing industrial peace by changing fundamentally the capitalistic method of production. I shall discuss here how far legislation can prevent the conflict between capital and labour resulting in strikes while the method of production remains as it is in which each of the two classes, the capitalists and labourers, try to get as much out of the other as possible. It is worthy

of note also that where a strike is accompanied with breaches of contract there is provision in the civil law of every civilised country for the recovery of the damages and where it is accompanied with riot, intimidation, unlawful assembly, assault, etc., there is provision in the criminal law of every civilised country to deal with those offences. So the scope of the thesis is narrowed down to the consideration whether the strike as such was illegal and should be made illegal.

CHAPTER III

Nature of Legislation to Prevent Strikes

Legislation to prevent strikes has been roughly of two kinds :—Direct and Indirect. Direct legislation, again, may be subdivided into two classes :—Repressive or Mandatory and Conciliatory, Recommendatory or Permissive. No democratic country can make a strike penal without providing legal recourse for obtaining the ends of a strike when justifiable. So, we find in the history of every country both Repressive and Conciliatory legislation side by side, sometimes in different enactments (*e.g.*, Combination and Arbitration laws of the United Kingdom) and sometimes combined in one enactment (*e.g.*, Compulsory Arbitration laws of Australia and New Zealand). By Repressive legislation I mean that which makes strikes illegal and by Conciliatory legislation that which provides facilities for the solution of labour disputes without making them illegal. The former deals generally with the combination and other criminal laws and the latter with laws relating to conciliation and arbitration. Indirect legislation, such as, the Factory Acts, Quarries Act, unlike direct legislalation tries to prevent strikes indirectly by ameliorating the conditions of labour.

CHAPTER IV

Course of Legislation to prevent Strikes in the United Kingdom

Course of Repressive Legislation.

It is not surprising, considering the violence of strike to find that the strike or in general the combination was till quite recently in every country an offence specially foreseen and punishable by law. History of legislation in this connection in the United Kingdom is most instructive and I propose to consider it in some detail. She is the oldest of all industrial countries and has a long history of legislation dealing with the conflict between labour and capital.

The history of strike is the history of a series of struggle on the part of trade unions to substitute collective for individual bargaining and as the right to strike is bound up with the right to assemble and organise, the laws preventing the right to combination were in effect laws preventing the right to strike. Similarly the laws preventing the labourers from raising their wages otherwise than by the help of the state are laws denying the right to strike because the object of all strikes is to raise wages directly or indirectly. So it is quite clear that the law of strikes in the United Kingdom is mainly to be found in the combination laws and the laws regulating wages.

Laws prohibiting the combination of labourers had been passed at intervals since the Middle Ages. Prior to the 19th century there were two very comprehensive Acts which, in effect, made strikes illegal. By the Statutes

of Labourers [1] which were passed in 1345 and 1350 and the Statute of Apprentices [2] which was passed in 1562 the wages of all workmen were fixed by the state and combinations of workmen to raise wages or shorten hours or better the conditions of their work could not be formed. Prior to the General Acts of 1799 and 1800 against all combinations of journeymen, Parliament was from the beginning of the 18th century perpetually enacting statutes forbidding combinations in particular trades. There were a series of statutes beginning with 20 Geo. II, C. 19, and ending with 10 Geo. IV, C. 12, which gave the justices of the peace summary jurisdiction in respect of disputes between employers and employees and power to order workmen to be imprisoned for breach of contract. In fact, there were 34 statutes of this nature in 1894 which were scheduled to be repealed in the 5 Geo. IV, C. 95.

Side by side with these statutes there was a common law doctrine of conspiracy in restraint of trade which made all combination of workmen to regulate the conditions of their work illegal. The offence consists in the agreement of two or more to do an unlawful act or to do a lawful act by unlawful means and innocent act in an individual is rendered criminal by a confederacy to effect it. The reason is—one man determines not to work under certain price and it may be individually the opinion of all. In such a case it would be lawful in each to refuse to do so, for each standing alone, either may retract from determination whenever he pleases. The continuance in improper conduct may, therefore, be well attributed to the combination. This doctrine, therefore, makes strike illegal. As to whether the criminality of combination

[1] 23 Edw. III, St. 1 (1345), 25 Edw. III, St. 2 (1350).

[2] 5 Eliz., C. 4 (1562).

is derived from the common law also there is some difference of opinion between Sir James Stephen and other authorities such as Sir W. Erle. Sir James Stephen is of opinion that combination to raise wages was made criminal by the statutes in the view that the common law did not punish such combinations.[1] On the other hand it appears from Sir W. Erle's summing up in R. V. Rowlands[2] that his view is that at common law all combinations to affect the rate of wages were conspiracies in restraint of trade and illegal. The combination to raise wages was a common law offence is established from the fact that in 1825 when all the statutes against combinations to raise wages were repealed in Geo. V., C. 129, combination to raise wages was held by the courts to be illegal being conspiracies in restraint of trade at common law.[3] It will not, however, serve much useful purpose to go into this matter in detail as we shall see later on that this difference has been finally set at rest by the Conspiracy and Protection of Property Act of 1875.[4]

In 1799 the Act to prevent unlawful combinations of workmen[5] was passed. This was a very comprehensive Act and made almost all combinations of workmen illegal. This Act was re-affirmed and codified in 39 and 40 Geo. IV, C. 106, in 1800. Though the Act applies equally to combinations of masters and workmen, there is no case on record during this period in which an employer was

[1] Hist. Criminal Law of England, Vol. III, p. 226 (202-226).

[2] Den. Cr. Ca. 364.

[3] Gas Stoker's Case ; Trial of Glasgow Cotton Spinners—T. Marshall 1838 ; R. *v.* Selsby (1851), 5 Cox E.C. 495 ; Hilton *v.* Eckerslay (1856), E.LL. and B L 42 ; R. *v.* Druitt (1867), 10 Cox C. C. 600 ; Walsby *v.* Anley (1861), 30 L. J. M. C. 121.

[4] 38 and 39 Vict., C. 86.

[5] 39 Geo. III., C. 81 (1799).

prosecuted. By the Combinations Act of 1800 every combination for obtaining an advance in wages or altering the hours of work or preventing any person employing whomsoever he might think fit to employ or for preventing workmen hiring themselves or attempting to induce workmen to leave their work was declared illegal; so also was attending any meeting called to advance any of these objects or spending money for the furtherance of such purposes or any of them.[1] Imprisonment for three months could be inflicted by the justices for offending against the Act.[2] These Acts mark the culminating points in the history of repressive legislation. These Combination Laws that were prevalent during the first quarter of the 19th century were of atrocious character. By them the workmen were subjected to heavy fines and imprisonment on any attempt to ameliorate their condition. Inspite of these stringent laws, however, combinations were formed and strikes occurred. With the peace that followed the battle of Waterloo came a period of industrial depression and reduced wages. The universal discontent manifested itself in strikes all over the country and the authorities strove to cope with the trouble by force, persecution, and by heavy sentences with the aid of the Combination Acts of 1799 and 1800. The agitation which followed led to the Reform Act of 1832. But side by side with this movement there was growing another agitation, engineered by Francis Place, Joseph Hume and others. This was the movement which culminated in the repeal of the Combination Acts of 1799 and 1800 and other Combination Laws. The repeal was effected with little notice in 1824.[3] This Act removed all criminal liability

[1] S. 6, 39 and 40 Geo. III, C. 106.

[2] S. 2, 39 and 40 Geo. III, C. 106.

[3] 5 Geo. IV, C. 95 (1824).

of combinations in advancing or fixing the rate of wages or altering the hours or quantity of work imposed either by statutes or by common law, but held to the inviolability of a contract, a breach of which by workmen was regarded as a criminal offence. The result was the formation of trade societies in all parts of the country. As trade was now improving and prices rising, the moment seemed opportune for a general attempt to secure a rise of wages. The result was that many strikes occurred in the country. A Parliamentary Committee was constituted to enquire into the conduct of the workmen and the effect of the Act. The Report of the Committee of 1824 is very instructive as it considers the effect of the Cobmination Act and so of the repressive legislation to prevent strikes. I should like, therefore, to deal with it in some detail. The Report is very shortly summarised in Mr. C. Howell's book on Labour Legislation, Labour Movements and Labour Laws thus:—It appears from the evidence before the Committee that combinations of workmen have taken place in England, Scotland, and Ireland, often to a great extent, to raise and keep up wages, to regulate their hours of working and to impose restriction on their masters respecting apprentices or others whom they might think proper to employ; and that at the time the evidence was taken combinations were in existence attended with strikes and suspension of work, and the laws have not hitherto been effectual to prevent such combinations. (2) That the laws have not only been not effectual to prevent combinations of masters or workmen, but on the contrary have in the opinion of many of both parties had a tendency to produce mutual irritation and distrust and to give a violent character to the combinations and to render them highly dangerous to the peace of the community. (3) That it is the opinion of this Committee that masters and workmen should be

freed from such restrictions as regards the rate of wages and hours of working and left at perfect liberty to make such agreements as they may mutually think proper. (4) That the practice of settling disputes by arbitration between masters and workmen has been attended with good effects and it is desirable that the laws which direct and regulate ar itration should be consolidated, amended and made applicable to all trades. So the Select Committee recommended not only for the abolition of all repressive laws to prevent strikes, but also to enact further conciliatory laws. The Act of 1824,[1] however, was repealed and a less comprehensive Act was enacted in its place in 1825[2] which governed the relationship between the employers and the employees for the next fifty years. The Act of 1825 though it was less comprehensive than the Act of 1824 was nevertheless, a very substantial concession to the labourers. Broadly speaking it declared once more the illegality of combinations for the purpose of regulating wages and hours of labour were declared legal.[3] The effect of the Act was thus to establish expressly the workmen's right to bargain collectively with their employers, and by concerted action to withhold if necessary their labour from the market, though many struggles still remain to be fought before this could be established fully and finally. But this Act unlike the Act of 1824, did not affect the liability of combinations of common law and conspiracy in restraint of trade being the only offence for which the combinations were liable to prosecution after 1825, the attention of the courts was drawn more closely to its nature. Convictions for conspiracy with others to raise wages at common law which were very rare

[1] 5 Geo. IV, C. 95 (1824).
[2] 6 Geo. IV, C. 129 (1825).
[3] S. 3, 6 Geo. IV, C. 129 (1825).

before 1825 became very common since then. This Act also like the Act of 1824 held to the inviolability of contract, a breach of which by workmen was regarded as a criminal offence. So under this Act a strike would be legal if it is unaccompanied by breaches of contract and if it did not amount to conspiracy in restraint of trade at common law. In 1838 members of the trade union were indicted for illegal combinations under the Act of 1825 merely for writing to their employers that a strike would take place.[1] In 1837 occurred the famous trial of the five Glasgow Cotton Spinners for conspiracy resulting in their conviction.[2] In 1846 the officers of the Journeymen Steam Engine, etc. Friendly Society were indicted for conspiracy. The indictment contained 4,914 counts and resulted in the conviction of 9 of the officers.[3] In 1856 J. Crompton said that combinations tending directly to impede and interfere with the free course of trade were criminal.[4] Bramwell B. in R. *v.* Druitt[5] went a step further in his summing up and laid it down that an agreement for co-operation against liberty of mind and freedom of will, irrespective of any intimidation or physical coercion, is a criminal conspiracy. This ruling and the decision in Farrer *v.* Close[6] that trade unions were so far illegal that their funds were not protected by the Friendly Societies Act 1855, led to the appointment of a Royal Commission which reported in 1869,[7] on the law of conspiracy as it affected combinations of employers and employees for trade purposes.

[1] R. *v.* Bykerdike Moody and Robinson 179 (1832).

[2] Trial of Glasgow Cotton Spinners—T. Marshall (1838).

[3] R. *v.* Selsby (1851), 5 Cox C.C, 495 (x).

[4] Hilton *v.* Eckerslay (1856), 6 Ellis and Blackburn 47.

[5] R. *v.* Druitt (1867), 10 Cox C.C. 600.

[6] Farrer *v.* Close (1869), L. R. 4 Q. B. 602.

[7] Parl. Papers, 1869.

In consequence of the report were passed the Trade Union Act of 1871[1] and the Criminal Law Amendment Act of 1871.[2] Section 2 of the Trade Union Act laid down that the purposes of a trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise. The Criminal Law Amendment Act of 1871 repealed the Act of 1825 and limited conspiracies in restraint of trade to conspiracies to do things prohibited by the Act, but by re-enacting and codifying numerous judicial decisions regarding conspiracy, picketing, etc., greatly increased the stringency of the law relating to strikes and trade combinations. The decision in 1872 in the Gas Stokers' case to the effect that a strike might under certain circumstances amount to a conspiracy at common law to molest, injure or impoverish an individual or to prevent him from carrying on his business and the agitation consequent thereto, led to the appointment of Royal Commission on Labour Laws in 1874 to enquire into the operation of the Masters and Servants' Act under which workmen could be arrested for breaches of contract, the Laws of Conspiracy and the Criminal Law Amendment Act of 1871. The recommendations of the majority report which was published in 1875 were (*a*) to abolish the penal clauses of the Masters and Servants' Act, (*b*) to retain the Criminal Law Amendment Act, and (*c*) to limit the operation of the Law of Conspiracy slightly. The Report was unsatisfactory and retrograde and was thrust aside by the Government.

In the same year the Conspiracy and Protection of Property Act[3] was passed which repealed all the

[1] 34 and 35 Vict., C. 32. [2] 38 and 39 Vict., C. 32.

[3] 38 and 39 Vict, C. 86.

former repressive enactments with regard to labour movements, strikes and labour combinations. This Act may be called the workmen's Charter; since the passing of this Act the strike has ceased to be, in any case, a criminal offence. The Trade Union Act of 1871 legalised trade unions, but the judges decided that the means used in furtherance of their objects might be regarded as a conspiracy. The Conspiracy and Protection of Property Act of 1875 nullified all those judicial decisions and legalised all acts done in furtherance of a combination that are not crimes when done by one man. Section 3 of the Act declared that an agreement by two or more persons to commit an Act in contemplation or furtherance of a trade dispute shall not be indictable as a conspiracy if the act would not be a crime were it committed by one person alone. By this provision the legality of a peaceful strike was placed beyond doubt. But this Act imposes criminal punishment for breaches of contract in the following cases:—(*a*) in the case of a workman employed in an undertaking for the supply of gas or water to a town, who has reason to believe that the probable consequences of his breach of contract will be to deprive the inhabitants of their supply of water or gas; (*b*) in the case of a person wilfully or maliciously breaking a contract of service or hiring who has reason to believe that the probable consequence of his breach of contract will be to endanger the life or health of any person or to cause injury to valuable property. A cessation of work resulting from an agreement not to renew existing contracts may be the occasion of many acts civilly and criminally wrongful, but it affords in itself no ground for any legal proceedings whatever except possibly in so far as its promoters may be proved to be acting maliciously. As we have seen above even now in the

United Kingdom the strike—the concerted and unnotified cessation of work in the public service industries is illegal and sudden breaches of contract in those industries criminally punishable. Both under the Acts of 1824 and 1825 breaches of contract by the workpeople in any industry was regarded as a criminal offence, but by this Act they ceased to be criminal offences excepting in certain industries. But where there was breach of contract, the employers affected could recover damages both from their workmen and probably also from the promoters of the strikes.[1] Until recently it was supposed that for wrongs committed in strikes only the individual wrongdoers could be made responsible. But the decision of the House of Lords in the Taffvale Railway case [2] in 1901 and in other cases showed that a trade union could be sued in tort for acts done by its agents within the scope of their authority and might be sued in its collective capacity and execution of any damages recovered could be enforced against its general funds. Thus the civil liability of the strikers continued and an act done in pursuance of an agreement in furtherance of a trade dispute would be actionable as a civil wrong though if such act, done without an agreement, would not be actionable. Then again to conduct a strike successfully the men must be able to prevent the employers from obtaining a sufficient supply of labour from other sources. With this end in view they generally station 'pickets' to guard the approaches to their places of work and persuade other workmen to keep away. The mere act of picketing was formerly considered 'intimidation' and therefore a criminal offence. Under the Criminal Law Amendment Act of 1871, however, intimidation

[1] Lumley *v.* Gye, 2 E. & B. 216; Bowen *v* Hall, L. R. 6. Q. B. D. C. 333.

[2] Taffvale Ry. Co. *v.* Amalgamated Society of Ry. Servants; Belfast Butcher's Case.

ceased to be criminally punishable unless it was of such a nature as to justify a magistrate in binding over the intimidators to keep the peace and it has been decided that the Conspiracy and Protection of Property Act of 1875 has made no change in the law on this point.[1]

The law on the subject of civil liability of trade unions as being in restraint of trade and as to the limits within which strikers may lawfully act for the purpose of bringing indirect pressure to bear upon the employer by influencing others not to work or deal with him, that is to say, the law as to 'picketing' was revised owing to the above decisions by the Trade Disputes Act of 1906[2] which followed the Royal Commission on Labour Disputes. This Act recognises the complete legal status of trade unions and their power of bargaining collectively if necessary by withholding the labour from the market (*i.e.*, by strikes) and extends the exemption to civil liability by providing that an act done in pursuance of an agreement or a combination in contemplation or furtherance of a trade dispute shall not be actionable unless the act if done without such agreement or combination would be actionable.[3] The effect of the decisions of the House of Lords in the Taffvale Railway case and Belfast Butchers' case that a trade union could be sued in torts for acts done by its agents within the scope of their authority also has been nullified by Section 4(1) of the Trade Disputes Act, 1906, which expressly forbids any courts to entertain any action against a trade union on behalf of all the members of the union in respect of any tortous act alleged to have been committed by or on behalf of the union. Further the effect of a series of

[1] Curran *v.* Treleaven (1891), 2 Q.B. 545.

[2] 6 Edw. VII, C. 47.

[3] S. 1 6 Edw. VII. C. 47.

recent decisions (of which Lyons *v.* Wilkins 1896 and 1899[1] was the most important) which interpreted the Act of 1875 to mean that all picketing was illegal except such as was merely for the purpose of obtaining or communicating information, has been nullified by Section 2 of the Act of 1906 by expressly providing that "it shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union * * * in contemplation or furtherance of a trade dispute to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work, or, abstain from working."[2]

So the law as to strikes, at the present day, in the United Kingdom is regulated by the following :—Trade Union Acts of 1871 and 1876, the Conspiracy and Protection of Property Act of 1875, and the Trade Disputes Act of 1906. The effect of the first two statutes is to recognise trade unions and of the latter two their power of collective bargaining and strikes. At the present day, therefore, the strike *per se* is not illegal in the United Kingdom except in certain industries noted above. Not only does this position follow from the above statutes, but it also derives considerable support from judicial decisions. Lord Justice Fletcher Moulton observes—in Gozney *v.* Bristol Trade and Provident Society [3] in 1904—that strikes *per se* are combinations neither for accomplishing an unlawful end, nor for accomplishing a lawful end by unlawful means. The

[1] Lyons *v.* Wilkins (No. 1) (1896), 1 Ch. 822; Lyons *v.* Wilkins (1899).

[2] S. 2 of the Act of 1906 extends. S. 7 of the Act of 1875 by legalising peaceful picketing carried on for the purpose of persuading to work or not to work.

[3] K. B. 901 at p. 923 (1909).

above case lays down that strikes are not necessarily illegal (though it may be attended with circumstances such as breach of contract or intimidation which make it illegal) and therefore rules providing for strikes in a trade union are not necessarily illegal nor is there anything illegal in rules providing for contributions in support of strikers. The mere fact that the effect of contribution is injurious does not make it unlawful.[1] The act complained of must amount to the violation of a right. No conspiracy is known to the law which has not for its object the accomplishment of an unlawful act or which does not involve the use of unlawful means.[2] The general law, also, as to restraint of trade cannot interfere with strikes. Lord Justice Farwell observes in Russell *v.* Amalgamated Society of Carpenters and Joiners in 1910.[3] "The law as to restraint of trade is now well settled. Every contract in general restraint of trade is bad, but a partial restraint limited so as to afford reasonable protection only to either or both of the contracting parties and so as not to be injurious to the public is good." It may be mentioned in passing, that though in Gozney's case it has been laid down that maintenance of strikes, is not necessarily illegal and so also rules providing for contributions in support of strikers, yet it has been laid down that compulsion as to provisions for a strike would make the rules and the association illegal.[4] It has been held that, if a strike has taken place in breach of a contract, but

[1] Mogul Steam Ship Co. *v.* McGregor, Gow & Co. (1889), 23 Q. B. D. 598.

[2] Per Bygham J. in Boots *v.* Grundy (1900) 828 L. T. 769 at p. 771.

[3] 1 K. B. 506 at p. 520.

[4] 19 T. A. R. 122; Osborne *v.* Amalgamated Society of Railway Servants (1910). A. C 87.

the broken contract has expired, persons who help to maintain the strike by supporting the workmen, after their current contracts of service have expired, in a refusal to enter into new contracts in new terms are not doing anything illegal.[1] But to procure by combination a continuing breach of contract is unlawful.[2] The above cases interpret the law and none of them declare that a strike *per se* is illegal. One of these cases, however, requires particular mention because some of the dicta of the learned judges in that case seem to throw some doubt on the legality of collective bargaining with its concomitant the strike. Though the Osborne case directly decides that Mr. Osborne, a member of the Amalgamated Society of Railway Servants, was entitled to restrain that trade union from making a levy on its members for the purpose of supporting the Labour Party or maintaining Members of Parliament, yet the majority of the law lords observed in the course of their judgments in effect that trade unions cannot lawfully do anything outside the purposes enumerated in the statute which created them and the purposes enumerated in the Trade Union Act 1876 is exhaustive. It has been considered in this case that any political action by a trade union is not incidental to the purposes mentioned in the above statute and is illegal. But it has not been considered in this case whether or not collective bargaining with its concomitant the strike is incidental to the purposes mentioned in the statute. I will submit, therefore, that the above dicta do not declare strikes *per se* illegal and even if the dicta had declared that strike

[1] Denaby and Cadely Main Collieries Ltd. *v.* Yorkshire Miners Association (1906), A. C. 384.

[2] Smithers *v.* National Association of Operative Plasters (1909), 1 K. B. 310.

per se is illegal that would have been as I have shown above directly against the statutes of 1875 and 1906 and the previous decisions of the House of Lords on this point. Legislative interference, however, has become again necessary to clear out the position of trade union and their power of collective bargaining from the doubt thrown by the above decision of the House of Lords.

Conciliatory legislation in United Kingdom.

By the side of the repressive legislation there is already at an early date an attempt to provide machinery for the purpose of conciliation, as is evident from the Acts of 1824,[1] 1867[2] and 1872[3] finally repealed by the Conciliation Act of 1896.[4]

Statutory provision for the settlement of labour disputes by regular tribunals with power to enforce their awards has existed ever since the middle of the 14th century. But from the time that the legislature allowed the conditions of service to become a matter of free contract, neither employers nor workmen have ever been induced to make use of the judicial machinery provided for them, but they have always preferred to form voluntary tribunals of their own. It would appear that the idea of referring matters in dispute to arbitration arose out of difficulties connected with trading and commercial cases, in cases where the judges felt that they require the services of experts to guide them. In such arbitration the questions at issue were not so difficult. The issues had reference to the past and damages at date sustained or to compensation for non-fulfilment. Beyond this the future was not involved. In this respect trading and commercial

[1] 5 Geo. IV., C. 96.
[2] 30 and 31 Vict., C. 105.
[3] 35 and 36 Vict., C. 46.
[4] 59 and 60 Vict., C. 30.

disputes differ entirely from labour disputes, awards as to which deal only with the future.

The arbitration by Justices of the Peace in labour disputes was first instituted in 1701.[1] During the course of the 18th century two further statutes[2] were passed, both giving summary jurisdiction to Justices of the Peace to determine disputes between masters and servants in certain circumstances. The first Arbitration Act of the 19th century [3] dealt with disputes in the cotton industry only. The laws which regulated and directed arbitration were consolidated, amended, and made applicable to all trade by 5 Geo. IV., C. 96, passed in 1824. This Act was amended in 1887 and 1872 and was the law in force on arbitration in labour disputes down to 1896. In all essential respects the question adjudicated upon by Justices of the Peace relating to labour disputes were similar to those relating to trading and commercial disputes. The Act gave compulsory powers of settling the labour disputes (to which it relates) on application of either party to a court of arbitrators representing employers and workmen nominated by a magistrate. The award could be enforced by sale, distress or imprisonment. The Act, however, with all its good intention, failed and was never operative, principally because of the provisions of Section 2 which runs thus: "But nothing in this Act contained shall authorise any justice or justices to establish a rate of wages or price of labour or workmanship at which the workmen in future be paid unless with the mutual consent of both masters and workmen." This Act failed to cope with strikes because strikes occurred generally from some dispute as to the terms of future contract which the Justice

[1] Anne, St. II, C. 22 (1701).

[2] 20 Geo II. C. 19 (1745); 31 Geo., II, C. 11 (1757).

[3] 43 Geo. III, C. 151.

of the Peace could not fix unless with the mutual consent of both parties. Both masters and workmen also did not like the provisions of the Act and invoke its operation because they did not like to submit to the decision of unknown men nominated by the Magistrate and because they did not like the provision for compulsion in the enforcement of awards. The Arbitration Act of 1824 is, however, important, as it recognises the principle of conciliation in the settlement of labour disputes and its failure is due to the repressive element contained in it. The Committee appointed by the House of Commons in 1856 found that the Act of 1824 was entirely ignored by the people and so they proposed a modification of the existing law. Hence in 1867 Lord St. Leonard's Act[1] was passed for the establishment of permanent tribunals in all centres of industry, elected by popular suffrage, with the view of averting strikes and settling labour disputes by conciliation. Under this Act, Councils were to be formed under license of the Home Secretary, granted upon the petition of masters and men in any particular trade or place. The Councils were not to consist of fewer than two masters and two workmen and not more than two of each. It provided for the appointment of a Chairman, who was unconnected with the trade. The Chairman, one master and one workman were to form a quorum and be able to make awards. The Council was to appoint a Committee of Conciliation consisting of one workman and one master and only if they were unsuccessful was a dispute to be submitted to the Council which might settle any dispute set forth in the Act of 1824 submitted to them by either party or any dispute whatever submitted to them by mutual consent. Awards were to be enforced according to the provisions 5 Geo. IV, C. 96 (Act of 1824) by distress

[1] 30 and 31 Vict., C. 105.

and imprisonment. The Act of 1867 is important in the history of conciliatory legislation because it recognises the principle of conciliation in the settlement of labour disputes a step further in its provision for the appointment of Councillors by the parties themselves instead of being nominated by the Magistrate as provided in the Act of 1824. But this Act also failed because of the limited scope and the repressive element contained in it. This Act also could not fix the terms of future contract unless with the mutual consent of both parties and retained the provisions of compulsion in the enforcement of awards. In 1872 the Master and Workmen (Arbitration) Act was passed to obviate some of the difficulties of the former Act specially with regard to disputes regarding the terms of future contract. By this Act an agreement might be entered into between masters and workmen undertaking to submit all disputes to arbitration concerning rates of wages to be paid, hours or quantity of work to be performed, or the conditions and regulations under which the work was to be done. Penalties might also be specified to be incurred upon the breach of any award and these might be enforced by distress or imprisonment. Under the Act an agreement was to be made when a workman accepted a copy of an agreement from a master, provided he did not give notice within 48 hours that he refused to be bound by it. The binding nature of the awards was also almost removed by a clause providing that an agreement might not require more than 6 days' notice to be given by masters or workmen before such ceased to employ or be employed. To insure awards being made quickly, it was provided that the arbitrators were to lose their jurisdiction over any particular case unless they heard and determined it within 21 days of the event from which the dispute arose. Under this Act the arbitrators were to have certain powers of

summoning witnesses before them and of calling for the production of books, etc. This Act, also, was like its predecessors a complete failure. Its failure is due to the element of repression involved in it. The failure is due to, amongst others, the following causes: (1) the strong objection of both masters and workmen to the legal character of proceedings under the Act. (2) The possibility of awards being enforced by sale, distress or imprisonment. But all the same this statute is important in the history of conciliatory legislation as it recognises the principle of conciliation in the matter of legislation with regard to strikes still further than the Act of 1867. Under this Act arbitration is made voluntary. But it granted some powers to the arbitrators and retained the binding force of the awards. Thus we see that the Arbitration Acts of 1824, 1867 and 1872 were failures and the reasons for their failure I have noted above. In addition to the reasons I have stated above the failure of these laws is due to the strained relation between the parties on account of the repressive laws which made the employers so powerful. Although no kind of progress was made in settling labour disputes in the United Kingdom under the provisions of statutory enactment, much have been done during the last forty years by voluntary effort. Forty years ago it was very difficult to induce the employers to meet the officials of the trade unions because of the repressive laws which made the employers so powerful and which were in force even down to the seventies and conciliation and arbitration did not begin to settle labour disputes until all the repressive legislation against labour was repealed in 1875 and the rights of the labourers were recognised. Since then joint boards had been springing up in various industries throughout the country, but the Government with the exception of those unsuccessful

enactments mentioned above had done nothing to assist industrial conciliation and arbitration. Early in the nineties a movement began which emphasised the importance of boards of conciliation and called for legislation on the subject. The evidence given before the Royal Commission on labour (1891-94) disclosed the existence of a considerable body of opinion in favour of some further action by the state for the prevention or settlement of labour dispute. Some impetus was also given to the movement by the settlement through official mediation (Board of Trade) of several important labour disputes in the early nineties. So the Conciliation Act of 1896[1] was passed for the promotion of voluntary boards of conciliation or arbitration through the intervention of the Board of Trade and otherwise. This Act is of a purely voluntary character and recognises the principle of conciliation in the settlement of labour disputes to the fullest extent and hence its success. As this Act governs the action of the state in the settlement of the labour disputes at the present day in the United Kingdom I will quote *in extenso* some of its important provisions. The provisions of the Act are as follows: "Where a difference exists or is apprehended between an employer or any class of employers and workmen.....the Board of Trade may, if it think fit, exercise all or any of the following powers, namely :—(1) Inquire into the causes and circumstances of the difference. (2) Take such steps as to the Board may seem expedient for the purpose of enabling the parties to the difference to meet together, by themselves or their representatives, under the presidency of a Chairman mutually agreed upon, or nominated by the Board of Trade, or by some other person or body, with a view to the amicable settlement of the difference. (3) On the application

[1] 59 and 60 Vict. C. 30.

of employer or workmen interested, and after taking into consideration the existence and adequacy of the means available for conciliation in the district of trade, and the circumstances of the case, appoint a person or persons to act as conciliator or as a board of conciliation. (4) On the application of both parties to the difference, appoint an arbitrator."

"If any person is so appointed to act as conciliator he shall enquire into the causes and circumstance of the difference by communication with the parties and otherwise and shall endeavour to bring about a settlement of the difference and shall report his proceedings to the Board of Trade.

"If a settlement of the difference is effected either by conciliation or by arbitration a memorandum of the terms thereof shall be drawn up and signed by the parties or their representatives and a copy thereof shall be delivered to and kept by the Board of Trade." This Act repeals all former Acts—Acts of 1867 and 1872—and with them the absurd limitation not to fix a future rate of wages. It is worthy of note in this connection that the Arbitration Act of 1889 (1) which consolidate the law relating to arbitration in general has no application to the settlements of collective disputes between employers and workmen and the Conciliation Act of 1896 expressly excludes the operation of the Act in disputes in which the Conciliation Act applies. Thus we see arbitration and conciliation in labour disputes as practised in the United Kingdom are entirely voluntary, both as regards the initiation and conduct of the negotiations and the carrying out of the agreement resulting therefrom and there is no element of compulsion whatsoever.

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CHAPTER V

Law of Strikes in the Dominions, United States of America, France and Germany

Law of strikes in the Dominions.

In the British Dominions the Law is less favourable to strikes specially if undertaken without previous reference of the dispute to conciliation or arbitration and in New South Wales every strike is a misdemeanour and is punishable with imprisonment. As the law of compulsory arbitration prevalent in these countries will help us in understanding the efficacy of repressive legislation to prevent strikes I propose to deal with it shortly.

Canada.

The Parliament of Canada passed in 1900 a Conciliation Act which was of a purely voluntary character and resembled in most of its features to the Conciliation Act of the United Kingdom. In 1903, however, the Railway Labour Act was passed which made special provision for the reference of Railway disputes to a board of conciliation and then to a board of arbitration. In 1906 an act respecting conciliation and labour was passed which consolidated the Conciliation Act of 1900 and the Railway Disputes Act of 1903. In the following year the Industrial Disputes Investigation Act was passed which provided machinery for the constitution of a board on the application of either side to a dispute in mines and industries connected with public utilities, whenever a strike involving more than ten employees is threatened. The provision of the act may be extended to other industries. So the Railway Companies or their employees may take action under either the Conciliation and Labour Act of 1906 or the Industrial

Disputes Investigation Act of 1907. The vital provisions of these Acts are (1) the prohibition of strike and lockouts *prior to and during the investigation* by the Board, (2) widespread publication of the findings of the Board of Investigation and Conciliation, (3) full permission to strike or lockout after the publication of the finding. So under the Canadian system the right to strike is not withdrawn from the employees in Railways, Mines, and other public service industries, but it is subject (1) to a sufficiently long delay to enable an official inquiry to be made, (2) to appear before the the Investigation Board If these slower methods fail, the field is then left open for a strike *ultima ratio.*

New Zealand.

The Industrial Conciliation and Arbitration Act (generally known as the New Zealand Compulsory Arbitration Law) was passed in 1894 and subsequently amended and consolidated several times. The Act is important as the first practical attempt of any importance to enforce compulsory arbitration in trade disputes. Under this Act New Zealand is divided into industrial districts in each of which there is a Board of Conciliation consisting of two representatives of employing class, elected by the Unions of Employers and two representatives of the working classes elected by the Unions of Workers and of a Chairman elected by the other four members or appointed, in case these four fail to agree, by the Government. When an industrial dispute is referred to the Board for settlement, it enquires into it and assists the parties to arrive at an industrial agreement when possible, and in other cases makes a recommendation as to what the parties should or should not do. If the parties accept the recommendation, an industrial agreement to the same effect is drawn up. All industrial agreements are filed with the clerk of the award of the district and become binding in the same way as an award

of the court of arbitration. If no industrial agreement is arrived at and the recommendation of the Board of Conciliation is not accepted, the dispute is referred to the court of arbitration. Up to 1901 disputes were ordinarily required to go first to a Board of Conciliation except on agreement of parties, but now either party may carry a dispute direct to the arbitration court The amendment was adopted because it was found in practice that the great majority of cases went ultimately to the arbitration court. The President of the court is a judge of the Supreme court, appointed by the Government, and other two members representing employers and employees are appointed by the Government from nominees of the unions of employers and employees. There is only one Court of Arbitration and it travels round the country hearing the disputes referred to it by the different boards. The boards may examine witnesses on oath, but the court has the further right to call for the production of books and instead of making recommendations, which may be rejected or accepted, it makes awards, which are legally enforceable, a breach being punishable in the case of an employer by a fine not exceeding £500, in the case of a union each unionist being liable to a fine not exceeding £10. It is the duty of the factory inspectors to see that awards are obeyed. The law provides for the extension of awards to related trades, to employers entering the industry hereafter, and in some cases to a whole industry. The machinery can be set in motion only by an industrial union of employers or employees. The former can be created in any district by any two employers in the same industry and the latter by seven workmen employed in one industry. A union acts by the will of the majority. So that four dissatisfied workmen are able to embroil their employers in a dispute. Whilst any case is under consideration

a strike or lockout is forbidden under a penalty of £50 By Sections 5 and 6 of the Industrial Conciliation and Arbitration Amendment Act of 1903 strikes or lockouts subsequent to the delivery of the award are also made punishable. The New Zealand law prohibits a strike only when one of the parties to the dispute appeals to the court. The law, however, prohibits strikes in related industries. So every one is at liberty to strike before proceedings are commenced under the Act, and if both parties to the dispute are non-unionists strike may very well continue.

Australia.

The first Compulsory Arbitration Act passed in Australia was the New South Wales Act of 1901. The Act is based on the New Zealand Act with some modifications. There are no Boards of Conciliation under this Act and all disputes are referred directly to the Court of Arbitration. The Arbitration Court has greater power over unorganized trades than in New Zealand and the scope of its awards is greatly enlarged by its power to declare any condition of labour to be common rule of an industry. Section 34 of the Act makes a strike or lockou a misdemeanour punishable by fine not exceeding £1,000 or imprisonment not exceeding 2 months. Laws of compulsory arbitration were passed in 1900 and 1902 in Western Australia and in 1904 in Australia based on the New Zealand and the New South Wales Act and the law that was passed by the Commonwealth of Australia is applicable to disputes affecting more than one Australian State.

The New South Wales Act unconditionally prohibits strikes prior to and pending the consideration of the disputes by the Arbitration Court whether the parties apply for an award or not and makes such disturbances a misdemeanour. It has been settled since 1904 when a body

of coal miners working under an award struck that a strike retained its criminal character even if it began after an award had been given. The West Australian and the federal Acts prohibit strikes unconditionally without regard to whether they are begun prior or subsequent to giving an award. The Federal Law in addition to a fine makes a person guilty of these offences ultimately liable to three months' imprisonment. Generally speaking, the Australasian Laws on arbitration and conciliation are more stringent and far-reaching than any other in the world.

United States of America.

There was no labour problem in the modern sense in the Colonial period of American history. Then the population was chiefly agricultural and the labour of the farm was performed by independent farmers who tilled their own soil. The labour of the South was performed chiefly by slaves until the civil war. The first years of the 19th century witness the beginning of a change owing to industrial development and attempts to form combination by the labourer were now and then made. The English Common Law as to conspiracy was followed at this time and combinations were prosecuted for conspiracy. But a strike *per se* has now ceased to be an offence. At the present day arbitration and conciliation are in the hands of the various State Governments and statutory provisions have been made for mediation in trade disputes. Federal legislation can only touch the question of arbitration and conciliation so far as regards disputes affecting commerce between different States. In 1888 an Act was passed to assist the establishment of arbitration and mediation boards as regards strikes and lockouts upon inter-state transportation lines. In 1898 a new Act was passed. It provides that in a dispute involving serious

interruption of business in railways engaged in inter-state commerce, the Chairman of the Inter-State Commerce Commission and the Commissioner of Labour shall on application of either party endeavour to effect a settlement or to induce the parties to submit the dispute to arbitration. In case the parties agreed to arbitrate these 2 officials would appoint one arbitrator and each of the parties concerned another. The decision of these arbitrators is binding and may be enforced in the United States courts by equity process. Employees shall not quit the service of the employer before 3 months after the award without giving 30 days' notice of their intention to do so and the employer is placed under a similar restriction as regards the dismissal of employees. While an arbitration under the Act is pending a strike or lockout is unlawful. So far no case of arbitration has arisen under this Act.

I propose to give a short sketch of the history of legislation to prevent strikes in the two principal countries, France and Germany, to show that the trend of continental legislation generally is in the same direction as in the United Kingdom and America.

France. Repressive legislation.

The abolition of the guilds and industrial development had as one of its effects an agitation among the journeymen for higher wages and for better conditions of employment and led to the passing of the Law Le Chaplier in 1791. The first clause of the Act declares that "whereas the abolition of all kinds of corporation of citizens of the same estate and of the same trade is one of the fundamental bases of French Constitution, it is prohibited to re-establish them *de facto* under any pretext or form whatsoever. The second clause prohibits formation of trade organisation. "The citizens of the same estate or trade,

entrepreneurs, those who run a shop, working men in any trade whatsoever, shall not when assembled together, nominate Presidents nor Secretaries nor Syndicates, shall not keep any records, shall not deliberate nor pass resolutions, nor form any regulations with regard to their pretended common interest." The eighth clause prohibits all gatherings composed of artisans, of working men, of journeymen or of labourers or instigated by them and directed against the free exercise of industry and work to which all sorts of persons have a right under all sorts of conditions agreed upon by private contract." Such gatherings are declared riotous, and are to be punished with all severity which the law permits.[1] The determination to prevent collective action on the part of the working men also guided the legislative activity of Napoleon. In 1803 during the Consulate a law was passed against coalitions. The law of 1803 against coalitions was replaced in 1810 by the clauses 414-416 of the Penal Code which prohibited and punished all kinds of coalitions. These articles which made strikes and all collective action or crime, and which show clearly the discrimination against working men are as follows :— Article 415 : "Any coalition on the part of working men to cease work at the same time, to forbid work in a shop, to prevent the coming there or leaving it before or after certain hours and in general, to suspend, hinder or make dear labour, if there has been an attempt or a beginning of execution shall be punished by imprisonment of one month to 3 months maximum ; the leaders and promoters shall be punished by imprisonment of 2 to 5 years." The prohibition against combination and organization was aggravated for the working men by Articles 291 to 294 of the Penal Code which forbade any kind of

[1] Les Associations Professionalles, Vol. J, Pp. 13-14.

associations of more than 20 persons. These articles were more stringent by the law of 1834 which prohibited associations even of 20 persons if they were branches of larger associations. The working men soon came to feel that the laws of the country put them at a disadvantage in the struggle for existence. Individually each one of them was too weak to obtain the best bargain from his employer. So the working man to remedy his individual helplessness was driven to disregard the law and to enter into combinations with his fellow workers for concerted action. The figures published by the Department of Justice gives the number of those prosecuted for violating the law of strikes. They give an idea of the frequency and persistence with which the working men had recourse to strike in spite of the law.

In 1864 in consequence of a strike of Parisian Printers which attracted much public attention the old law on "coalition" was abolished and the right to strike granted. The right to strike, however, was bound up with certain other rights which the French working men were still denied. Unless they had the right to assemble and to organise they could profit but little by the new law on coalition. But henceforward the Government began to tolerate the formation of organisations by the working men. These organisations were brought under the protection of a new law in 1884 which legalise syndicates or trade unions. So since 1884 a strike *per se* has ceased to be illegal in France.

Conciliatory legislation.

In France a very clear distinction is drawn between disputes arising out of the interpretation of existing contract and those concerning the terms of future contract and there are two distinct state methods of settling

the two different classes of disputes. The former have been settled since 1806 by the compulsory system of Councils of Prud'hommes which generally dealt with disputes between individuals as to wages due, etc., which in the United Kingdom would be determined by a court of summary jurisdiction. In the case of the latter a voluntary system has existed since 1892, by which the Government place the services of its officials at the disposal of disputants in cae of a threatened or existing strike with the object of assisting in the settlement of the dispute by conciliation and arbitration. We are concerned here with the latter class of law because strikes are concerned with the terms of future contracts.

The French conciliation and Arbitration Law of December 1892[1] provides that either party to a labour dispute may apply to the Juge de paix of the Canton, who must inform the other party of the application within 24 hours. If they concur within 3 days, a joint committee of conciliation is formed consisting of 5 representatives of each party. The Juge de paix presides over the discussion of the committee of conciliation but has no vote. If an agreement is arrived at, it is set down in writing and signed by the delegates of each party and the Juge de paix. If no agreement results the parties are called upon to appoint arbitrators who if they fail to agree choose an umpire. If such arbitrators can not agree on an umpire the President of the civil tribunal appoint an umpire. If an agreement is come to at any time by arbitration it must be set down in writing and be signed by the arbitrators and sent to the Juge de paix of the Canton. When a strike occurs, in the absence

[1] The English translation of the law is to be found in the Report of the Royal Commission on Labour 1894.

of an application by either party it is the duty of the Juge de paix to invite the employers and workmen to proceed to conciliation and arbitration. The law leaves the parties entirely free to accept or reject the services of the Juge de paix. Thus, we see, in France the law on strike is wholly conciliatory in all the stages.

Germany.

By the general arbitration laws of 1890[1] and 1897 Industrial Courts have been constituted under certain conditions to offer their services to mediate between parties to labour disputes. The preamble of the Act of 1890 runs thus: "In many recent strikes it has been felt that although both sides were ready to treat, negotiations could not be initiated because no regular and authoritative body existed which could undertake the conduct of such negotiations. The present law attempts to establish a body of this kind. It is hoped that the constitution of the Industrial Court, which ensures special knowledge and unbiassed judgment may command the confidence of both employers and employed." By the Act of 1890 which was slightly amended in 1901 provision was made for conciliation in large industrial disputes. In case of disputes which may lead to strikes the court must intervene on the application of either party or of its own initiative. The Conciliation Board consists of the President of the court and an equal number of representatives of both parties who are not concerned in the dispute. If an agreement is arrived at by conciliation the terms must be reduced to writing and be signed by all the members of the boards and by the delegates three in number of each party. If an agreement cannot be arrived at by conciliation, the Board must give a decision on the merits of the disputes by a simple

[1] English translations to be found in the Report of the Royal Commission on Labour, 1894.

majority vote. Whatever the decision is, it must be publicly notified by the board and the parties are allowed a certain time within which to notify their acceptance or rejection, though the court has no power to compel the observance of its decision and the parties may or may not refer the dispute to the court. Thus we see that the law on strikes is conciliatory in its nature in Germany.

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CHAPTER VI.

Indirect Legislation.

The object of strikes is the improvement of the conditions of labour directly or indirectly. The laws like Factory and Workshop Act, Trade Boards Act, Minimum Wage Act prevent strikes in as much as they improve the conditions of labour. Those laws by securing some advantages to the labourers minimise the chances of strikes.

The necessity of such legislation was felt when it was found in the beginning of the 19th century that the unrestricted competition between the labourers and the capitalists had gone very hard against the former. It was discovered that the doctrine of *laissez faire* should be accepted at least with one condition—that the parties are equal. The laws were thus enacted to define the limits within which competition should work to protect the labourers.

In the United Kingdom the fearful spread of epidemic disease among the labouring population throughout the Factory district of Manchester led to the passing of the first Factory Act in 1802[1]. The Act subjected all mills to sanitary regulations for the preservation of the health of the labourers of the mills. This Act limited the hours of work of apprentices to twelve. Since then a long series of Factory Acts were passed both for textile and non-textile factories until a comprehensive Factory and Workshop Act was passed in 1878[2] as a result of a Royal Commission appointed in 1875. This Act recognised

[1] 42 Geo. III, C. 73. [2] 41 and 48 Vict., C. 16.

in clear terms the right of state intervention in the interests of the community. Amongst other important provisions regarding health and safety of workers there were provisions for working hours, meal-times and holidays.[1] The Act of 1878 received striking additions by a series of Acts from 1883 to 1897 until the law on the subject was finally amended and consolidated in the Factory and Workshop Act of 1901.[2] This is the principal Act which governs the factories and workshops in the United Kingdom at the present day though short amending Acts were passed in 1903, 1906 and 1907. There are important provisions in the Act relating to health, safety and morality of workers and the education of children. It also, regulates the hours of labour and provides for meal-times and holidays. The history of labour agitation shows that the demand for shorter hours of work and minimum wages occupy very important places. In the United Kingdom the first Act that directly regulated wages is the Trade Boards Act of 1909.[3] Then, the Coal Mines (Minimum Wage) Act was passed in 1912.[4] These Acts were passed as a result of an agitation by the labourers in certain trades for fixing minimum wages which in existing customs and with present prices would enable a workman to maintain efficiency and bring up a family according to his own standard of living. The Government directly interfered with the hours of adult labour in the United Kingdom for the first time in 1908 when the Miners' Eight Hours Bill was passed.[5] The Quarries Act of 1894,[6] the Coal Mines Regulation Acts of 1887 and 1896[7] and the Metalliferous Mines Regulation

[1] S. 24 and 26,—41 and 48 Vict., C. 16.
[2] 1 Edw VII, C. 2.
[3] 9 Edw VII, C. 22.
[4] 2 Geo. V, C. 2.
[5] Coal Mines Regulation Act 8 Edw. VII, C. 57.
[6] 57 and 58 Vict., C. 42
[7] 50 and 51 Vict., C. 58.
[8] 59 and 60 Vict., C. 43.

Act of 1872[1] which govern the mines other than those governed by the Coal Mines Acts were passed for the amelioration of the conditions of labourers in quarries and mines. The Truck Act [2] was passed in 1887 to secure that every workman should receive his wages in coin and not in kind. There are the Housing of the Working Classes Act of 1890[3] and the Housing and Town Planning Act of 1909 to provide for the housing of the working classes. There are the common law, Lord Campbell's Act of 1846,[4] The Employer's Liability Act of 1880[5] and the Workmen's Compensation Act of 1906[6] to secure to the workmen their right to damages or compensation against the employers for death or injury. The Labour Exchanges Act[7] was passed in 1909 for establishment of national system of labour. exchanges to deal with unemployment and make the labour mobile. The Pension Act [8] was passed in 1908 to provide for the old age of the labourers and the National Insurance Act [9] was passed in 1911 to secure to them medical, sickness, disablement, sanatorium, maternity and other benefits. Thus it will appear that in the United Kingdom strong efforts have been made to ameliorate the conditions of labourers.

There are similar laws on the statute books of all industrially advanced countries. Apart from the difficulty of tracing the course of such legislation in countries othe than the United Kingdom, I do not think it will be much useful to do so as they are all to a certain extent following in the footsteps of the United Kingdom. These laws are, also, quite insufficient to cope with the

[1] 35 and 36 Vict., C. 77.
[2] 50 and 51 Vict., C. 46.
[3] 53 and 54 Vict., C. 76.
[4] 9 and 10 Vict., C. 93.
[5] 43 and 44 Vict., C. 42.
[6] 6 Edw. VII, C. 58.
[7] 9 Edw. VII, C. 7.
[8] 8 Edw. VII, C. 40.
[9] and 2 Geo. V, C. 55.

demands of labourers now-a-days. The standard of comfort among the labourers in the industrially advanced countries has risen rapidly and the demand for advantages and concessions through the trades union has outgrown all the advantages and concessions secured to them or could be secured to them by laws. Such laws are very important to the countries which are taking to industrial life in the modern sense, such as India. In such a country if such laws are enacted or amended if already in existence with due foresight, labourers can be kept contented to a certain extent and thus some of the strikes may be averted.

CHAPTER VII.

Efficacy and Justification of Legislation to prevent Strikes.

That the repressive laws of the type prevalent in the United Kingdom, France, and other countries in the 18th and 19th centuries has been a failure is quite evident from the fact that they have been removed altogether from the statute books of those countries. It will hardly be necessary to substantiate this fact by statistics when it has been universally found by experience to be not only useless, but something worse than that. It was not only useless but worse than that because not only did the repressive laws fail to prevent combinations and strikes but they made also the laws as to arbitration and conciliation which were prevalent side by side with the repressive laws useless in the solution of labour disputes because they made the employers too haughty, and unless and until the equality of rights between the parties was recognized employers and employees would not meet to discuss matters. The Select Committee to consider the effect of the combination laws in 1824 reported that at the time the evidence was taken combinations were in existence attended with strikes and suspension of work and the laws have not been effectual to prevent such combinations. They were further of opinion that the laws had a contrary effect and had a tendency to produce mutual irritation and distrust, and to give a violent character to the combinations and to render them highly dangerous to the peace of the community. So they recommended substantially for the abolition of repressive laws and enactment of conciliatory laws. The trend of the recommendations of the Royal Commissions on Labour in the United Kingdom appointed

subsequently in 1867, 1891-94, and 1906 and of the famous American Industrial Commission is also towards removing repressive laws and providing for facilities for conciliation and arbitration. So at the present day England, France and other leadings countries of the world have recognized the right to strike within certain limits provided it does not take the form of attacks on liberty of persons or on property, etc. They have recognized the right to strike not because they have been convinced of the morality of strikes but because they think it expedient to recognise the right. If we test this right to strike with the first principles on which all rights should be based we can see at once that there could be no such thing as right to strike. The two first principles are, the maximum liberty of individual or the negative principle of non-interferance and the maximum satisfaction of all concerned (the greatest happiness of the greatest number or the positive principle of maximisation of happiness). 'The right to strike' from the point of view of liberty must be subject to the general conditions laid down by Adam Smith, who, more than any one, enforced the principle of non-interference with the liberty of labour. The right to labour can be exercised freely provided it does not injure the similar right of one's neighbour. Now, it is clear that a strike on a large scale indirectly interferes with the freedom of labour of members who are not directly concerned in the particular dispute. After a certain point, the stoppage of transport or the stoppage of the supplies of coal or of any other primary necessaries means the destruction of right to work of labour in general, and the insistence on the liberty of the transport workers or the collieries, and so on may mean absolute tyranny over the rest of the community. So the promotion of the liberty of the few curtails the liberty of the many. The right to strike,

however, is subjected to much more severe limitation when the supreme test of maximum happiness is applied. This principle applied to the gains and losses of strikes shows that in most cases the particular losses exceed the particular gains and even the indirect gains are very often more than neutralised. It follows, then, that the prevention and the control of strikes should be made as efficient as possible in the public interests. But the difficulty is of making the law effective. It has been found by experience by England, France and other leading countries that such laws cannot be made effective as they cannot be enforced against the labourers on account of their number. They have also found that such labour disputes are best solved by mutual discussion and the retaining of repressive laws on the statute books beget spirit of antagonism between employers and employees and make mutual discussion and settlement of disputes impossible. So I say that the right to strike has been recognized not on the ground of morality, but on the ground of expediency.

The extent to which general compulsory Arbitration Laws prevalent in New Zealand and Australia can be expected to afford a substitute for strikes and lockouts is one on which opinions differ. V. S. Clark is of opinion that "these laws do appear—in spite of the occasional defiance of their orders—to increase the law-abiding spirit. The public opinion of working men supports their observance as a matter of principle. Whether the strike as an instrument for enforcing labour demands falls into absolute disuse or not this spirit is a social gain." These laws, according to him have discouraged strikes. The sympathetic strike has been rendered practically impossible by the law. It has become difficult to finance a protracted struggle between working men and employers. All the advantages which labour

receives in such difficulties from permanent organisation and mutual support is lost because the work has obtained control of the organisations. Strikes are crimes with penalties attached. Theoretically all persons and in practice leaders can be fined or imprisoned for encouraging them. The moral effect of this prohibition is considerable and the amount of real compulsion exercised by the community to repress strikes may be increased through existing mechinery to any required degree. He, however, confesses that the laws do not rest equally upon employers and employees, because the former are held to its strict observance by their financial responsibility and the real sanction behind the court's order so far as the working men were concerned will always remain to a large extent a moral one.

Though it is quite true that the number of strikes have not grown in these countries in proportion to the increases in industrial population yet it cannot be said that these laws have been a success. The partial success of these laws is due to the fact that the awards have been so far generally in favour of the employees and that these countries are so situated both geographically and economically that they can support such legislation without being crushed by foreign competition. These countries are not big and have a small population and also rich in natural resources and isolated. In spite of these advantages, however, there has been a general rise of prices and cost of living in these countries and some of the industries are decaying being compelled to meet with foreign competition. This is due to the fact that awards of the Courts of Arbitration have increased wages and hence the cost of production so as to hamper manufacturers. The profit of the producers is maintained by a higher tariff. The price is raised and consumers suffer for the increase in the

cost of living. But those manufactures which are exported will gradually decay because the increased cost of production must be paid from profits as prices cannot be raised to consumers in other countries without sacrificing trade to foreign competition. The compulsory arbitration laws are opposed by the employers generally on the above ground—That the economic effects of such laws are bad. That they take their stand on a very strong ground I have shown above. Besides this there are the following objections to general compulsory arbitration laws :—(1) The arbitration court is a representative rather than a purely judicial body. It does not possess the freedom from bias that the laws require of a petty jury, but rather represents a balance of opposing interests under the control of a judicial officer. This representative character suggests that it is a legislative as well as a judicial authority. The union of legislative and judical authority in the same body is unwise for the court is called upon not only to interpret its own laws, but also to punish violators of its laws that depends upon its own interpretation. The judge has besides no expert knowledge of the technical matters which control the provisions of an award. Theory of a decision upon testimony in industrial matters implies ability not only to weigh the facts intelligently but also to discriminate and weigh industrial and technical principles as a judge discriminates and weighs principles of jurisprudence in a legal decision. The judge has not only no previous training for this, but he may be paritcularly disqualified by his legal pre-possessions for considering practical problems of industrial administration. (2) Litigation is multiplied, because workmen will bring a case before the court, where they would not risk strike. (3) These laws assume that, conditions of employment prescribed by the state are just and that it

is therefore wrong not to accept them. The right of freedom of contract has been considerably modified by these laws. They involve a very different attitude towards competition from that which underlie factory legislation—regulations of hours, children's work, minimum wages, etc. These mean to modify the plane of competition whereas compulsory arbitration law does not content itself with defining the limits within which competition shall work. They supplant competition. Wages, interests, profits, etc. are virtually fixed by public authority. (4) The difficulty of enforcing the decisions when they prove to be against the workmen. Enforcement against the employers is easy enough. They have property and they can be brought to book by fines. But against employees fines must remain a merely nominal mode of enforcement. Quite apart from collecting driblets of fines from scattered workmen, the political odium of the proceeding will prevent any democratic Government from pushing it far.

There are, however, cases in which the strike appears so dangerous for public security for want of continuity of operation in certain industries that we may very naturally ask whether in these exceptional cases, its penal character should not be maintained. First of all, is the case of functionaries and employees of the state or of public services. In the last few years in different countries we have seen strikes of postal employees, workers in the state ship-building yards and a strike of policemen in France. All the Governments concerned have energetically refused to their functionaries, even those to whom they allowed the right to form trades union the right to stop their service on pretext of a strike and have considered the interruption of service as an act of rebellion, involving dismissal at the very least. They point out to their functionaries who claim the right

to strike that their situation is not quite the same as that of workers to employers. On the one hand their nomination has nothing in common with a contract and on the other their salary is fixed by law and so can be altered only by the legislative power. All compulsion with a view to obtaining a modification of their salary by any other than the regular legislative channel constitute, therefore, a veritable act of rebellion.

There are many other industries which though not carried out by state employees, are none the less essentially "public services" the interruption of which may be exceedingly harmful to public security, *e.g.*, railways, water works, gas works, telegraphs, telephones. In many countries there are laws punishing strikes in public service industries. In England concerted cessation of work in those industries without reasonable notice given has been made punishable by the criminal law—a mode of dealing with the situation which is probably of no great practical effect—since the enforcement of the criminal law against the strikers is difficult—but one which at least registers a strong public opinion. I think compulsory arbitration laws in such cases will be more efficacious. If it is held indispensable to deny the right to strike to certain categories of workers they must be given in compensation a court of arbitration, before which they may carry their grievances. Besides compulsory arbitration in such cases will not have to face the problems which underlie general compulsory arbitration. The standard of wages accepted as right for the particular industries would be those which obtain in similar occupations not subject to arbitration. The few difficulties, however, in such legislation are : (1) It is not easy to know just where to stop. If railway workers are to be refused the right to strike why not

also baker's assistants? To this it may be answered that a line must be drawn some where. The industries, the interruption of which is dangerous to public security should be brought under legislation. (2) The serious difficulty would be that of securing enforcement of the decision against the employees. How can thousands of men be prosecuted, judged and imprisoned? How can they be forced to pay fines if they have nothing. A written undertaking not to strike might be required, of each candidate for public services, but we should not rely much upon the moral value of any such pledge. So the real efficacy of such compulsory arbitration, so far as the workmen are concerned will be in the state of public opinion. It serves to focus public opinion and so to bring a powerful force to bear in favour of peaceful settlement.

It has been made abundantly clear by the history of legislation of different countries that the conciliatory legislation is the only way in which majority of labour disputes can be solved. The history of legislation in Great Britain is especially instructive on this point because she has fully adapted this principle as a result of her long experience by the Conciliation Act of 1896. The Royal Commission on Labour of 1894 were of opinion that though the only complete solution of the problem of strikes was to be found in the progress of the industrial evolution, which would assign to the captains of industry as well as to the manual workers their position as servants of the community, yet the remarkable increase that had taken place in the course of the last few years in the number and effectiveness of boards of conciliation and arbitration encouraged the hope that industrial peace might be best secured by their agency. This is so

because all that I have said concerning strikes amounts to this that the strike, precisely because it is an act of war, is by its nature beyond the action of law in the proper sense of that term—the law which forbids strike and the breach of which is punished by the state. But the theory of non-interference had its days and state interference is now extending on all sides. The state would therefore be failing in its duty if it does not take any steps to prevent strikes when the evils of strikes are so well known. On the first principles also the state-interference is justified because the right to strike does not satisfy the doctrine of maximum satisfaction—the greatest good of the greatest number. The principle of non-interference is only justified when it promotes greatest good of the greatest number and when it fails to do that it has no place in modern jurisprudence. The state, however, cannot directly interfere in these matters firstly because it will be impossible then to enforce the law and secondly because that would not fulfil the purpose of legislation as that would beget irritation among the classes. Therefore, the only way in which the state can effectively interfere in these matters is by providing facilities for the settlement of the disputes by arbitration and conciliation. If the parties agree beforehand to abide by the award of the third party the mode of settlement is described as "arbitration." If there be no such agreement, but the offices of the mediator are used to promote an amicable arrangement between the parties themselves, the process is described as "conciliation." The third party may be one or more disinterested individuals or a joint board representative of the parties or of other bodies or persons. Arbitration is adapted to a more advanced stage of a dispute and to be more

compulsory in character. The difficulties connected with industrial arbitration are: (1) the award may be disregarded, (2) the element of contentiousness attaching to the proceedings, (3) the difficulty of securing accurate data for the arbitrator and of determining the principle on which his award should be based. Boards of conciliation consist of representatives of master and men engaged in the industries with which they are concerned, who meet together to endeavour to settle by discussion and mutual agreement any disputes which may arise. The advantages of this method of adjusting industrial disputes over that of arbitration lie chiefly in the fact that the decision is attained by friendly and informal discussion and mutual concessions and that therefore, it is more likely to be faithfully observed and is less likely to leave behind a feeling of irritation. In England the Conciliation Act of 1896 enables the Board of Trade—(1) to enquire into the causes and circumstances of particular strikes, (2) to take steps for bringing the parties together, (3) to appoint a person or persons to act as conciliator or as a board of conciliation, (4) on the application of both parties to appoint an arbitrator. The Act also provides for the registration of boards of conciliation and for the furnishing of periodical returns to the Board of Trade by such Boards and gives power to the Board of Trade to aid in the establishment of board of conciliation for districts or trades, in respect of which adequate means do not exist for having disputes submitted to conciliation. In England these permanent private boards and the boards of conciliation and arbitration established through the Board of Trade (voluntary state boards) have proved very useful. They serve as mediators and conciliators when a dispute occurs and make public report of their action and thus bring public opinion to bear in aid of a

settlement. As board of combination they provide a standing tribunal to which disputants can refer. The powers of these boards are for recommendations only and their awards have no legal sanction. None the less the existence of a respected standing tribunal serves in industrial conflicts as the Hague Court of Arbitration serves between nations. So this is the only way in which the state can help in the settlement of labour disputes. Professor Nicholson in his valuable book on Strikes and Social Problems (1896) suggests that the first remedy is not more legislation, but more light. "It is quite true that a Board of Conciliation and Arbitration cannot enforce its recommendations but it can throw light in the subject in dispute and point out what is for the interest of both parties. And there can be no doubt that pressure of public opinion would be brought to bear on the side of justice." If the question be thoroughly argued by a board of conciliation public opinion will declare strongly against the side that rejected the decision. The press can inflict very great punishment because what most evil-doers dread is not the penalty of law, but exposure. If it could be shown that the misery of thousands of workmen and children could be traced to the refusal to accept a fair decision, the public censure would act in the way of prevention for the future. Arnold Toynbee says in his Industry and Democracy—"absolute industrial peace is impossible as long as the problem of distribution remains what it is to-day, but there is no reason to believe that industrial warfare cannot be reduced to a minimum. The road to peace is through war and no panacea for industrial disputes can be found, but it is possible to do much by building up and consolidating a voluntary system of conciliation and arbitration. A relative industrial peace may be a long time in coming, but it will come so soon

as the development of industry and the education of people permit of it. Before it can come it is absolutely essential that employers and employees should be brought to appreciate as fully as possible the complicated problems of industry. This alone Boards of Conciliation can facilitate. Arbitration cannot educate. Compulsory arbitration is worse than useless for it tends to cultivate a spirit of antagonism between employers and employees."

References :—

Parliamentary Reports (for Reports of Royal Comissions on Labour) ; Arnold Toynbee, Industry and Democracy ; Jevons, State in Relation to Labour ; Nicholson, Strikes and Social Problems ; Taussig, Principles of Economics, Vol. II ; Charles Bradlaugh, Labour and Law ; Adam Smith, Wealth of Nations.

CHAPTER VIII.

Legislation to prevent Strikes in India.

I propose to conclude with a word about India. India has not passed through Industrial Revolution as yet. In cotton and jute industries she has adopted the Western method of production and factory system has been introduced. Strikes have occurred in those industries, though we have heard also of strikes in railways, tramways, post office, etc. As the labourers are very poor and are not organised in this country the strikes have not led to disastrous consequences as yet. But such a state of things cannot be expected to last for a long time. India will ere long be developed into an industrial country and have to face this labour problem. In England we have seen that the organisation of the labourers and the growth of trades union could not be checked in spite of many penal laws. So sooner or later the labourers in India will be organised and formed themselves into trades union. I do not mean to say that the development of trades union is an evil. I do mean to say, however, that it will then that the seriousness of strikes will be felt. However that may be, there is no doubt that India must think of providing facilities for the solution of labour disputes simultaneously with industrial development. At present there are no direct laws, conciliatory or repressive, except Act IX of 1860 which deals specially with such labour disputes. India will, therefore, do well to take a leaf out of the statute book of Great Britain. I do not mean to suggest thereby that she will then at once solve the problem of labour disputes. She will do well however to avoid the many repressive laws which were found by Great Britain to be

useless and enact when time will come, conciliatory laws like those of England for general disputes without making strikes as such illegal in all cases. Act IX of 1860 is an Act which makes provision for the speedy determination of certain disputes between workmen engaged in railways and other public works and their employers. By section 1 of this Act, the Government may empower any Magistrate to decide disputes as to wages or price of work. The Magistrate may order specific performance the non-compliance of which may be punished by fine or imprisonment. So this Act does not make strikes as such illegal even in railways and other public works before the Magistrate's judgment and order, apart from the difficulty of enforcing such an order when it goes against the labourers. In England the Conspiracy and Protection of Property Act of 1875 imposes criminal punishment for breaches of contract, in such cases. So the Indian and the English Law on this point are not similar. The Indian law does not prohibit strikes and provides only a very crude method of solving the disputes. In my humble opinion India should do well to follow the Canadian law on this point which seems to me to be the best. The two other Acts which deserve our notice in this connection are:—Act I of 1858 and Act XIII of 1859 (Supreme Council Acts). It would appear from the preamble of Act I of 1858 that it was enacted to make it obligatory on the persons of the labouring classes to unite their labour to prevent breaches of the embankments of certain works of irrigation in Madras Presidency *as the safety of persons and property is endangered* by inundations caused by sudden breaches of the embankments of these works of irrigation. That such a law is necessary for such emergencies there cannot be any doubt. I have, therefore, no remark to offer against this piece of repressive legislation. The other Act—

Act XIII of 1859—was enacted to provide for the punishment by Police Magistrates of breaches of contract by labourers in certain cases in the Presidency towns of Calcutta, Madras and Bombay as the remedy by suit in the courts for recovery of damages is wholly insufficient. I do not think this piece of legislation is of any use if the labourers in a body refuse to work apart from the fact that it should not be made to apply to industries other than public service industries.

Though it is true that the time has not yet come for the enactment of conciliatory legislation in India as neither the jobbers and Sirdars through whom the labourers are recruited have the capacity and influence to represent and control the labourers nor there are associations like trades union whieh can represent and control the labourers, yet I think even in respect of what I have called indirect legislation India as compared with other civilised countries is very backward. Take for instance, the Indian Factories Act (Act XII of 1911). Section 28 of the Act provides for a working day of 12 hours in textile factories. It is well known that when hours are shortened economies are effected in a good many ways and the whole nation is benefited (*vide* Marshall Principles of Economics, Vol. I, p. 780). The workmen of Australia and New Zealand have secured working days of eight hours. In the United States the Federal Government have passed an eight hours law which applies to workmen on Government work. In the United Kingdom the miners secured working days of eight hours in 1908 and an agitation for an working day of eight hours in all trades is hotly going on. Sections 68 to 71 of the Factory and Workshop Act of 1901 of the United Kingdom provide for the education of children in factories. The Indian Factory Act, however, does not make any provision for the education of children in factories though the

efficiency of the worker is directly connected with the education. I have noted in Chapter VI the various laws which have been enacted in the United Kingdom to ameliorate the conditions of labourers in factories, workshops, quarries and mines. A glance at those statutes would show how backward India is in respect of what I have called indirect legislation. Beside the Indian Factories Act, the only other Act to ameliorate the conditions of labourers is the Indian Mines Act (Act VIII of 1901). In the United Kingdom the labourers in mines have got not only an working day of eight hours, but also the benefit of a minimum wage by statutes. The labourers in mines in India, of course, cannot yet think of such advantages being secured to them by statutes. But, even with regard to provisions relating to health and safety of labourers the Indian Factories and Mines Act compare unfavourably with the similar Acts of the United Kingdom.